

## **Remarks**

Applicants have cancelled claims 1-20 and 22-32 without prejudice or disclaimer. Applicants reserve the right to pursue the cancelled subject matter in one or more continuing applications. Applicants have added new claims 33-35. New claims 33-35 find support in the specification as originally filed, for example, at pages 37-38, paragraphs [0178]-[0180] and at page 40, paragraphs [0188-0191]. Thus, no new matter has been added. Furthermore, Applicants have amended the title to reflect the presently claimed invention, and have also updated the reference to prior applications in paragraph 1, as requested by the Examiner.

### **I. Specification Objection**

The Examiner has objected to the title of the invention because it is not descriptive. As requested, Applicants have amended the title to "Cytostatin II Antibodies and Methods." Applicants respectfully request reconsideration and withdrawal of this objection.

### **II. Rejection of Claims Under 35 U.S.C. § 112, First Paragraph**

#### **A. Enablement**

The Examiner has rejected claims 1, 5-8, 23, and 27-32 under 35 U.S.C. § 112, first paragraph because the claims allegedly "contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention." *See* Paper No. 20061124, page 3, section 5. The Examiner has requested that if a deposit of the claimed organisms has been made under the terms of the Budapest Treaty, then an affidavit or declaration by applicants or a statement by an attorney of record be made as to the availability of these deposits. Accordingly, Applicants submit the following:

Human Genome Sciences, Inc., the assignee of the present application, has deposited biological material under the terms of the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure with the following International Depository Authority: American Type Culture Collection (ATCC), 10801 University Boulevard, Manassas, Virginia 20110-2209 (present address). The deposit was made on September 26, 1995, accepted by the ATCC, and given ATCC Accession No. 97287. In accordance with M.P.E.P. § 2410.01 and 37 C.F.R. § 1.808, assurance is hereby given that all restrictions on the availability to the public of ATCC Accession No. 97287 will be irrevocably removed upon the grant of a patent based on the instant application, except as permitted under 37 C.F.R. §

1.808(b). A partially redacted copy of the ATCC Deposit Receipt for the Accession No. 97287 is enclosed herewith as Exhibit A.

In light of the above statement, Applicants submit that the instant rejection under 35 U.S.C. § 112, first paragraph has been obviated, and should be reconsidered and withdrawn.

### **III. Rejection of Claims Under 35 U.S.C. § 103**

Claims 1-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over R. Godbout, Experimental Eye Research, Vol. 56, Issue 1, January 1993, pages 95-106, in view of Immunobiology, The Immune System in Health and Disease, Third Edition, Janeway and Travers, Ed., 1997, and further in view of Sadler et al., U.S. Patent No. 5,028,534 for claim 10, and further in view of Hoffmann et al., U.S. Patent No. 4,444,887 for claim 11. (Paper No. 20061124, pages 4-8). Applicants respectfully disagree with the Examiner.

Nevertheless, in the interest of facilitating allowance of the instant application, claims 1-20 and 22-32 have been cancelled herein, claim 21 has been amended, and new claims 33-35 have been added. Applicants submit that the pending claims are not obvious over the cited references, and respectfully request that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 103(a).

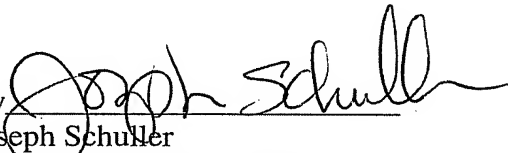
### **Conclusion**

Applicants respectfully request the amendments and remarks of the present response be entered and made of record in the present application. In view of the foregoing amendment and remarks, Applicants believe they have fully addressed the Examiner's concerns and that this application is now in condition for allowance. An early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the allowance of this application.

Applicants believe that there are no fees due in connection with the filing of this paper. However, should a fee be due, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: April 11, 2007

Respectfully submitted,

By   
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# American Type Culture Collection

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## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### INTERNATIONAL FORM

#### RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Human Genome Sciences, Inc.  
Attention: Robert H. Benson  
9410 Key West Avenue  
Rockville, MD 20850

Deposited on Behalf of: Human Genome Sciences, Inc.

Identification Reference by Depositor:

ATCC Designation

DNA Plasmid, 95881 pF221

97287

The deposits were accompanied by:    a scientific description    a proposed taxonomic description indicated above.

The deposits were received September 26, 1995 by this International Depository Authority and have been accepted.

#### AT YOUR REQUEST:

☒ We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strain.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years after the date of deposit, and for a period of at least five years after the most recent request for a sample. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested October 6, 1995. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Rockville, Md. 20852 USA

Signature of person having authority to represent ATCC:

Frank Simione, Acting Director, Patent Depository

Date: October 16, 1995